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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)
<p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>Sept 19 2008</u> </p> <p>Signature _____</p> <p>Typed or printed name <u>KHAI HEE KWAN</u></p>		<p>Application Number <b>10/614,919</b></p> <p>Filed <b>July 3 2003</b></p>
<p>First Named Inventor <b>KHAI HEE KWAN</b></p>		<p>Art Unit <b>3692</b></p> <p>Examiner <b>Chuks Onyezia.</b></p>
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p>		
<p>This request is being filed with a notice of appeal.</p>		
<p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p>		
<p>I am the</p> <p><input checked="" type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input type="checkbox"/> attorney or agent of record. Registration number _____.</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____.</p>		
<p>  Signature <b>KHAI HEE KWAN</b>  Typed or printed name <b>60-89-213117</b>  Telephone number <b>Sept 19 2008</b>  Date _____</p>		
<p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted. and 4 pages of attachment		

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

**Application number:** 10/614,919

**Art Unit:** 3692

**Applicant:** Khai Hee Kwan

**Examiner:** Chuks Onyezia, Esq.

**Title:** System and method for conducting an electronic financial asset deposit auction over computer network.

The Prior Arts:

Casa (5,613,679) provided “A method of playing a lottery game wherein a primary random selection from among a group of wagering lottery players is supplemented by a secondary random selection from among a group of potential secondary recipients. The method essentially comprising the steps of accepting a monetary wager from at least one wagering lottery player; securing for each wagering lottery player a player series of indicia comprising a multiplicity of characters; revealing a winning series of player indicia comprising a multiplicity of characters; determining whether any wagering lottery player is a winning player by ascertaining for each player series of indicia whether a predetermined number of characters thereof matches characters of the winning series of player indicia; awarding a valuable prize to the winning player or players, if any; and randomly selecting at least one secondary prize recipient from among a group of eligible secondary recipients. “ (Abstract)

Understein (7,092,904 ) provided “A system and method for qualifying a bidder over a global network for an auction helps to significantly reduce or eliminate commerce fraud. An auction site, for example, enlists the system to maintain bidder funding accounts for prospective bidders. When a bid is placed, the funds are reserved in the bidder's bidder funding account including funds for a deposit if required. In the event that a bidder is not the high bidder, the reserved funds are released. At completion of the auction, the funds may be transferred from the winning bidder's bidder funding account to the seller, and the bid holds are released. A balance in the bidder funding account can be established according to funds deposited in the account in an interest-bearing account or via a line of credit issued from a bank card issuing company or the like.” (Abstract)

The examiner had given a Final rejection mailed July 9 2008. In essence there is little differences between the examination done for the final and the previous action letter mailed Jan 31 2008 save for the 35 USC 112 rejection found in the latter. Be that as it

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may, for the purposes of this Conference Brief, the Appellant contends that this application be allowed because the examiner had failed to show that all the elements are present in Claim 1 and hence no *prima facie* 35 USC 103.

1. Not all elements are present in Claims 1,7,13,19

This is obvious as the examiner had applied his own interpretation to find a participant of a lottery as a bidder in an auction. The examiner contends that the two are very similar but provide no explanation beyond this assertion. ( See page 6 of Final Action Letter) This is unsatisfactory as a mere assertion nothing more is merely a conclusion and is to be disregarded. (See Continental Can co v Monsanto co., 948 F.2d 1264, 1268 20 USPQ2d 1746, 1749 (Fed Cir 1991). The examiner must provide extrinsic evidence, rather than opinion, that makes clear that “ the missing descriptive matter is necessarily present in the thing described in the reference, and that it would so recognised by persons of ordinary skill.” In re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999). Therefore, for this to be acceptable, the examiner will need to explain why one skilled in the art of lottery could see it to be very similar to a bidder in an auction.

2. No Prima Facie for 35 USC 103(a).

Notwithstanding the absent of all the elements (as above), the examiner contends that one skilled in the art would be motivated to combine for the purpose of providing a secure way of extending credit to participants while assuring payment. The examiner was mindful of Understein Col 1 lns 38-44 which reads “The system according to the present invention enables an auction company to provide a secure way of preventing fraudulent bidding and preventing participation by bidders that fail to settle after winning an auction. The system is preferably an Internet web site that serves to electronically transact the acceptance and verification of deposits from multiple auctions or transactions and participants simultaneously. The system provides an easy to use and efficient method for

minimizing fraudulent bidding in multiple auctions simultaneously while being capable of providing insured (such as FDIC) interest bearing deposits held for bidders. The system incorporates a secure web site capable of communicating with numerous auction entities and tracking multiple deposit accounts for participants in a commerce environment simultaneously.” (underlined mine)

From the above, it is clear the examiner has mischaracterized a system for auction company accepting and verifying deposits to satisfy auction transactions (ie buy and sell). It is plain there is NOT a single suggestion of extending credit in the entire quoted section above. The simple logic is why would an auction company (being intermediary such as ebay.com) be interested in extending credit ? And for that matter what would Casa's teaching which deals with lottery has to do with extending credit as well ? It is unknown that lottery ticket sellers provide buyers with loans to buy lottery tickets and surely the payment of winnings is not by way of loan either. How would “extending credit” be of any assistance to even one of the prior arts is unclear and unstated by the examiner. Even if it could marshal “interest bearing deposits held for bidders” one must be cautious to understand that the facility is for BIDDERS and it is unknown in the art auction for bidders (buyers) to be given credit by auction company, or bidders providing credit or accept credit in auction transactions with sellers. Clearly there is not even an iota of evidence to show one skilled in the art would consider “extending credit” as a motivation to combine the prior arts.

It should also be noted that in this claimed invention, BIDDERS actually bid against each other (without seller) and provide deposits at discount determined by the winning bids to the winner and whereby the winner is then excluded in all subsequent cycles until last bidder and relegated to repaying said deposits (principal) to each subsequent winner who had previously contributed. Further, the claimed invention requires the network to be a trusted network and the members are depositors (not merely bidders).

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Claim 1 is listed below as a representative claim.

1. A method for conducting a trusted deposit auction within at least one network connected to at least one depositor's computer, said method operating on a host computer, comprising:

- A) receiving bid amount as a discount from principal or discounted principal from members of a trusted network wherein said members are depositors;
- B) selecting a winner from said bids in said auction submitted by said depositors;
- C) excluding said winner from future auctions;
- D) depositing pooled funds for said winner's account;
- E) repeating steps A, B, C, D at predetermined intervals with remaining depositors; and whereby funds comprising cash equivalent or cash.

The Appellant humble pray that this application be allowed.

Thank you



KH KWAN

Appellant

023336.

19 Sept 2008